

AFFIDAVIT

Affidavit of Federal Bureau of Investigation ("FBI") Special Agent T.J. Roberts in support of: (1) Request for an Expansion of Prosecutorial Jurisdiction under 28 U.S.C. § 593(c); and (2) Application for the Referral of Related Matter under 28 U.S.C. § 594(e).

I, T.J. Roberts, being duly sworn, depose and say:

A. I, the affiant, am a Special Agent with the FBI. I, the affiant, am the FBI Case Agent assigned full-time to the Office of Independent Counsel ("OIC") - David M. Barrett, which is currently investigating Henry G. Cisneros, former Secretary of Housing and Urban Development ("HUD").

B. I, the affiant, have been a FBI agent for approximately eight years and a Certified Public Accountant ("CPA") for approximately nine years. I have received formal training as a Federal Agent at the FBI Academy in Quantico, Virginia. During my tenure as a Criminal Investigator, I have been involved in, among other things, the investigation and prosecution of various violations of the Federal Criminal Code, principally, white collar violations involving bank fraud, public corruption and tax fraud.

FACTUAL BACKGROUND

C. The affiant has personal knowledge of the facts and circumstances surrounding the allegations described in the following paragraphs as a result of my involvement in this investigation:

1. On December 17, 1992, President-Elect Clinton nominated Henry G. Cisneros to become HUD Secretary, a position which requires United States Senate confirmation. As part of the confirmation process, the FBI Director ordered a Level 1 background investigation be conducted. A Level 1 background investigation is required for all cabinet-level positions and is the highest type of background investigation conducted by the FBI. Accordingly, during late December, 1992, and early January, 1993, the FBI conducted a background investigation of Cisneros which included interviews of Cisneros and others by FBI agents.

2. On December 30, 1992, the FBI conducted its first interview of Cisneros. During the course of the interview, he did not advise the interviewing agent of any information with respect to payments he had made to his former mistress, Linda D. Medlar (presently Linda D. Jones and hereinafter "Medlar").

3. A review of Medlar's personal bank records subsequently conducted by the OIC, reveals that as of the date of this first FBI interview of Cisneros, he had provided Medlar with approximately \$160,000.00.

4. By January 7, 1993, the FBI had become aware of information as part of its background investigation which indicated Cisneros may have made cash payments to Medlar.

5. On January 7, 1993, the FBI again interviewed Cisneros and asked specific questions concerning his relationship with Medlar and his payments to her. During this interview, Cisneros intentionally concealed and omitted information with regard to, among other things, the subject matter of his relationship with and payments to Medlar. The FBI report of that interview provides in pertinent part:

When specifically asked about the payments to Medlar, Cisneros advised that the payments were irregular in timing, and that **he paid taxes on all receipts he was paid as salary for speeches made** and he emphasized that the payments to Medlar were not "hush money". . . **Cisneros reemphasized that he paid federal and state and local income taxes on all monies received.**

* * *

According to CISNEROS the highest individual payment to MEDLAR was about twenty-five hundred dollars, and the total paid to MEDLAR never exceeded ten thousand dollars in any given year; CISNEROS emphasized that if this amount was reached or surpassed in 1992, he realizes he will have to pay gift taxes on the amount given to MEDLAR in excess of ten thousand dollars.

* * *

FBI FD-302 [REDACTED] pp. 1-2 (emphasis added).

6. As part of its background investigation of Cisneros, the FBI also interviewed various of his employees and associates. A number of these individuals concealed information from the FBI with respect to Cisneros' relationship with and payments to Medlar, as well as other matters, including the non-payment of taxes.

7. On January 8, 1993, the FBI attempted to interview Medlar at her residence in Lubbock, Texas, as part of Cisneros' background investigation. On that occasion, Medlar refused to answer questions regarding her relationship with Cisneros and told the interviewing agent not to re-contact her.

8. On December 27, 1994, Medlar admitted that when she was contacted by the FBI during Cisneros' background investigation, she and Cisneros had agreed to conceal information about their relationship from the FBI, including, among other things, the payments she received from him. (FD-302 of SA Claude Martin.)

9. By January 11, 1993, the FBI report of its Level 1 background investigation of Cisneros had been submitted to the Office of President-Elect Clinton and to Senator Donald W. Riegle, Jr. of Michigan, the then Chairman of the Senate Committee on Banking, Housing and Urban Affairs (Senate Banking Committee), the Committee with jurisdiction over Cisneros' confirmation.

10. Due in part to false statements and factual omissions by Cisneros, Medlar and certain employees and associates of Cisneros, the FBI report did not contain complete information on Cisneros' relationship with and payments to Medlar. Moreover, the report did not reveal that Cisneros, Medlar and others had agreed to conceal these matters from the FBI and others who inquired.

11. On January 12, 1993, the Senate Banking Committee conducted Cisneros' confirmation hearing. In its hearing, the Committee did not address Cisneros' relationship with Medlar, his payments to her, the purposes of the payments, the source of the funds used for the payments or whether the taxes were paid on those funds. Cisneros was subsequently confirmed as HUD Secretary by the Senate.

12. Post-Confirmation, Secretary Cisneros alone and in conjunction with others, through various means, made additional payments to Medlar totaling at least \$85,000.00 through late January 1994.

13. The payments to Medlar, from whatever source, appear to have stopped in January, 1994. As a result, on July 29, 1994, Medlar filed a civil suit in the 72nd District of Lubbock, Texas, against Secretary Cisneros entitled Linda Medlar v. Henry G. Cisneros, 94-547854, which claimed, among other things, that Secretary Cisneros violated an agreement wherein he allegedly agreed to pay her \$4,000.00 per month until her teenage daughter graduated from college. As a result, it was revealed that Medlar had recorded certain telephone conversations she had with Secretary Cisneros and others during the period 1990 through 1993.

14. In September, 1994, based on information made public as a result of Medlar's lawsuit against Secretary Cisneros, the FBI began a preliminary investigation of Secretary Cisneros pursuant to the Ethics in Government Act, 28 U.S.C. § 591 et seq.

INFORMATION RECEIVED

D. Predicated on the objective of tracking cash payments made to Medlar by Cisneros and others acting on his behalf, the affiant conducted an analysis of Cisneros' and

Medlar's finances in order to determine: (1) the nature, extent and motivation for the payments; (2) the identity of all participants in the payments; and (3) the identity and motivation of all participants involved in the concealment of the payments. The affiant: (1) interviewed witnesses; (2) reviewed reports of interviews conducted by other agents; and (3) examined volumes of financial documents relating to Cisneros and Medlar including, but not limited to, bank statements, deposit slips, checks received by Cisneros and/or Medlar, wire tickets and Currency Transaction Reports. The IC received some of this information from the IRS pursuant to an Ex Parte Order under 26 U.S.C. § 6103. Moreover, statements contained within this affidavit are based upon information the affiant has received from other federal agents in the form of oral statements as well as a review of certain documents relevant to the OIC's investigation.

Introduction

1. To date, the OIC's investigation has revealed, among other things, that in 1989 Cisneros began making payments to his then-mistress, Medlar, to satisfy her demands for financial support. The payments were regular although they varied in amount and frequency. At that time, Cisneros was no longer Mayor of San Antonio and, as a result, had begun earning his income exclusively from the private sector.

2. Cisneros received income from, among other things, his consulting work for various companies and speeches given throughout the United States. Monies used for the payments came from several sources, but most of the payments made to Medlar are directly traceable to Cisneros' consulting and speech income.

3. The OIC's investigation has further revealed that Cisneros and Medlar, in an effort to conceal potentially damaging information about Cisneros, agreed and conspired in December of 1992 to conceal and keep concealed from the FBI and any other individual or entity that inquired, the true nature, extent and motivation concerning Cisneros' payments to Medlar as well as other potentially disqualifying and/or embarrassing information about Cisneros and known by Medlar. Pursuant to this agreement, Cisneros made false statements to the FBI and concealed information from FBI agents on December 30, 1992, and January 7, 1993.

4. Since 1989, Secretary Cisneros made payments to Medlar for the purported purpose of financial support. However, after Secretary Cisneros conspired with Medlar and others to conceal information concerning Medlar from the FBI, the payments began to serve additional purposes, one of which was that Medlar would maintain her silence concerning the conspiratorial agreement with Secretary Cisneros and his false statements to the FBI. Thereafter, Secretary Cisneros, alone and in conjunction with others, continued making payments to Medlar throughout 1993 and into 1994.

5. The affiant, during the course of the investigation, more specifically the financial examination of Secretary Cisneros' books and records, observed a steady dissipation of

assets, an increase in liabilities and an overall decrease in net worth. Throughout the period 1989 through 1994, Secretary Cisneros had a relatively serious cash flow problem which was exacerbated by his making regular cash payments to Medlar. Secretary Cisneros also had credit problems evidenced by, among other things, his wife's inability to obtain a certain department store's credit card because of a poor credit history. The affiant has reason to believe, based upon specific and credible evidence, that an overall depressed financial condition motivated Secretary Cisneros, in whole or in part, to underreport his taxable income and evade taxes as detailed herein.

The IRS Investigation of Secretary Cisneros

6. During the early stages of its investigation, the OIC learned that since October 21, 1994, the Internal Revenue Service, Criminal Investigation Division ("IRS-CID") in San Antonio, Texas, had been conducting an administrative tax investigation into Secretary Cisneros' income tax liability for the years 1989-1994. The focus of IRS-CID's investigation was whether Secretary Cisneros evaded the payment of income taxes on all income received, including, but not limited to, monies he used to make payments to Medlar. The OIC learned that the IRS-CID had interviewed some of the same witnesses the OIC intended to interview and that the IRS-CID had issued summonses and obtained evidence relating to matters within the OIC's prosecutorial jurisdiction.

7. After learning of the IRS-CID investigation, the OIC obtained an Ex Parte disclosure Order pursuant to 26 U.S.C. § 6103, which authorized the IRS to disclose to the OIC certain information gathered during the IRS-CID's administrative tax investigation.

8. The OIC further learned that the IRS possessed 86 cassette tapes containing what Medlar purported to be the original recordings of her conversations with Secretary Cisneros and others.

9. The IRS disclosed information in compliance with the Ex Parte disclosure Order including the aforementioned 86 cassette tapes.

10. Pursuant to the IRS-CID investigation, IRS SAs Kesha Lange and Dorman Barrows interviewed Secretary Cisneros in the presence of counsel in Washington, D.C. on January 26, 1995. At that time, Cisneros knew not only that the IRS was investigating whether he paid federal income taxes on his income, including funds paid to Medlar, but that DOJ was conducting a preliminary investigation to determine whether his conduct with respect to Medlar warranted the appointment of an Independent Counsel. The IRS report of the interview provides in pertinent part:

Cisneros stated he was **“meticulous, scrupulous and uncompromising in making sure that everything was reported for taxes.”** To the best of his knowledge that all of his income was reported on his income tax returns for the years 1989 to 1993.

IRS Report of SAs Lange and Barrows, p.6 (emphasis added).

These apparently false statements made on January 26, 1995, are consistent with Secretary Cisneros' false statements to the FBI made two years earlier on January 7, 1993. In that January 7, 1993, interview, Secretary Cisneros told the FBI: (1) that he paid taxes on all receipts he received in connection with his communication (speech) business; and (2) that he paid federal, state and local taxes on all monies he received.

**The Department of Justice/Public Integrity Section's
Preliminary Investigation of Secretary Cisneros**

11. The IRS's administrative tax investigation began during October, 1994, shortly after the Attorney General had begun her preliminary investigation of Secretary Cisneros on October 14, 1994.

12. During the preliminary investigation, the Department of Justice, Public Integrity Section (“DOJ/PIS”) examined a total of eight (8) income checks made payable to Secretary Cisneros as part of its effort to determine whether he underreported his income for tax years 1991 and 1992. Specifically, DOJ/PIS examined seven (7) income checks received by Secretary Cisneros in tax year 1991 and one (1) income check received by Secretary Cisneros during tax year 1992.¹ During the affiant's analysis of Secretary Cisneros' finances, the affiant examined not just these eight (8) checks, but all known funds received by Secretary Cisneros between 1989-1993.

13. OIC also learned that during the preliminary investigation, the FBI notified an attorney at DOJ/PIS about the existence of the IRS administrative tax investigation. OIC Interview of SA Claude Martin, on June 25, 1996.

14. DOJ/PIS did not seek disclosure of the IRS materials by **Ex Parte** Order pursuant to 26 U.S.C. § 6103(I) or other means. 26 U.S.C. § 6103(I) authorizes the disclosure of return and return information to officers or employees of any federal agency engaged in “any investigation which may result in [a judicial or administrative proceeding pertaining to the enforcement of a specifically designated federal criminal statute] . . . solely for the use of such officers and employers in such [investigation].” 26 U.S.C. § 6103(I)(1)(A) and (B).

¹ The total amount of these checks is \$14,942.21.

15. Further, the existence of the IRS administrative tax investigation was not disclosed in the memorandum to the Attorney General dated February 27, 1995, which announced the results of the preliminary investigation ("DOJ/PIS Memorandum"): (1) "... there is no evidence that Cisneros underreported his income," DOJ/PIS Memorandum at p. 44; and, (2) certain gift tax issues "should be referred to the IRS for further investigation," DOJ/PIS Memorandum at p. 46. Finally, the memorandum provided that "[t]hough we may suspect based on available information that [gift tax returns] have not been filed by Secretary Cisneros, because of disclosure prohibitions we cannot be sure of this until the IRS conducts its own investigation."

16. Consistent with the DOJ/PIS Memorandum, the Application to the Court pursuant to 28 U.S.C. § 592(c)(1) for the Appointment of an Independent Counsel ("Application") dated March 13, 1995, provided that "[o]ur investigation developed **no evidence** that Secretary Cisneros **failed to pay any income or gift taxes due in connection with his payments to [Medlar].**" (emphasis added). The Application then concluded that "... no further investigation of this matter is warranted as a criminal tax matter ..."

17. The Special Division appointed David M. Barrett as Independent Counsel on May 24, 1995, to investigate whether Secretary Cisneros made false statements to the FBI during his background investigation in connection with his payments to Medlar.

PAYMENTS MADE BY SECRETARY CISNEROS OR ON HIS BEHALF TO MEDLAR

E. The analysis the affiant conducted on evidence and information acquired from the IRS and the aforementioned sources revealed payments from Secretary Cisneros and/or others on his behalf to Medlar from 1989 through 1994 and other facts as they pertain to potential violations of federal criminal law.

CISNEROS' EVASION OF INCOME TAX IN 1989

F. In an effort to determine if funds Cisneros received in 1989 from First Gibraltar, F.S.B. ("Gibraltar"), a Texas banking institution, were funneled (in whole or in part) to Medlar, the affiant conducted a review of all relevant documentation regarding this transaction. The examination revealed the following:

1. On July 31, 1989, Cisneros and Gibraltar entered into a contract for services whereby he would provide to Gibraltar approximately 10% to 15% of his time each month, ostensibly in the area of public relations. In return, Gibraltar agreed to pay Cisneros a fee at the rate of \$80,000.00 per year, payable in twelve monthly installments of \$6,666.67 on the first day of each calendar month.

2. In contravention of the terms set forth within the contract for services, Gibraltar paid Cisneros the entire \$80,000.00 via check number [REDACTED] dated August 6, 1989, drawn on First Texas Savings Association. These funds were paid to Cisneros before any services were rendered. Moreover, according to the Office of Thrift Supervision ("OTS"), the agency that examined Gibraltar in 1990, Cisneros never produced any tangible work product in return for the \$80,000.00; and further, that Gibraltar's parent reimbursed Gibraltar for the \$80,000.00 it improperly expended to pay Cisneros for what was, in effect, a "no-show" job.

3. On August 21, 1989, Cisneros deposited the \$80,000.00 check into two accounts he maintained at First Interstate Bank in San Antonio, Texas. According to bank records received from First Interstate, Cisneros deposited \$34,000.00 of the \$80,000.00 check into account number [REDACTED], his personal checking account, and deposited \$30,000.00 into account number [REDACTED], his business checking account (Cisneros Communications). Cisneros retained the remaining \$16,000.00.

4. A review of tax workpapers received from Rene Gonzalez (a San Antonio CPA and the preparer of Cisneros' 1989 individual tax return), including, but not limited to, the working trial balance, current general ledger, statement of honorariums, income and expense summary, tax returns and related records, and cash receipts log, revealed that Cisneros reported \$64,000.00 (the funds deposited into his First Interstate accounts) of the \$80,000.00 from Gibraltar, but failed to report the remaining \$16,000.00. Accordingly, this money was never included in income and taxed.

5. On August 22, 1989, the day after Cisneros personally deposited all but \$16,000.00 of the \$80,000.00 received from Gibraltar, a \$3,000.00 cash deposit was made into Medlar's bank account at Broadway National Bank, account number [REDACTED], in San Antonio, Texas.

6. In view of the facts set forth in paragraphs F.1-5 above, there is reason to believe, based upon specific and credible evidence, that Cisneros understated his gross income for tax year 1989 in the amount of \$16,000.00, of which a portion went to Medlar, and thereby evaded the payment of income tax and made false statements to the FBI and the IRS about this matter.

CISNEROS EVASION OF INCOME TAX IN 1991²

G. 1. Since the late 1980s and continuing through January, 1993, Cisneros earned the majority of his income as a guest speaker/lecturer; the majority of his clients were business, trade and civic organizations who hired Cisneros to speak on a variety of topics. Cisneros' trade name was Cisneros Communications, an unincorporated sole proprietorship based in San Antonio, Texas. Cisneros Communications generally employed approximately four individuals who performed a myriad of administrative functions, including the recordation and accounting of income.

2. At the conclusion of the 1991 tax year, December 31, each organization that compensated Cisneros for a speaking fee and/or travel reimbursement was required, pursuant to IRS regulations, to issue in his name or that of Cisneros Communications a Form 1099. A 1099 states how much a particular entity paid to an individual and for what purpose, in this case for miscellaneous income, i.e., for giving a speech. The payor organization is also required to transmit to the IRS a listing of all 1099s it issued during the calendar year.

3. During 1991, Cisneros and/or Alfred Ramirez, an employee and friend of Cisneros acting on his behalf, deposited \$70,524.21 into Medlar's checking account at Broadway National Bank, San Antonio, Texas, account number [REDACTED]. Of this amount, \$58,582.00 was deposited in cash; the remaining funds of \$11,942.21 were comprised of checks made payable to Cisneros. Various organizations issued these checks to Cisneros, presumably for speaking fees and travel reimbursements.

4. The affiant reviewed tax workpapers furnished by Gonzalez and Luis Hernandez (a San Antonio, Texas, CPA who Cisneros retained in the Spring of 1992 to complete his 1991 individual tax return). The purpose of the review was to determine the frequency, source, size, duration and other facts and circumstances of Cisneros' payments to Medlar to ascertain whether Cisneros had lied to the FBI about his payments to Medlar, including Cisneros' assertion that he paid taxes on all monies received which, of course, include those paid to Medlar. To this end, affiant reviewed Cisneros' tax returns and underlying workpapers to determine how Hernandez calculated Cisneros' income. According to the tax return and the underlying workpapers, Hernandez calculated Cisneros' business income by compiling all 1099s he received from the various organization, i.e., "the 1099 method." Hernandez neither considered the amounts deposited into Cisneros' bank accounts (personal, business or otherwise) in computing gross income, nor did he consider income checks that Cisneros and others cashed

² Affiant's examination with respect to tax years 1991, 1992 and 1993 encompassed a sources and uses analysis of monies deposited into and withdrawn from Cisneros' and Medlar's known bank accounts. Records examined included all relevant source evidence including, but not limited to, bank statements, deposit slips, checks, wire transfers and Currency Transaction Reports.

while acting on his behalf for the benefit of Medlar. Again, Hernandez relied on the 1099s Cisneros and members of his staff furnished him. Moreover, during a February 8, 1995, interview with an FBI agent, Hernandez advised that he was unaware of any income checks that were not corroborated by 1099s and/or deposited into Cisneros' bank accounts. (FD-302 of SA Claude Martin.)

5. Although each payor organization was supposed to have issued Cisneros a Form 1099, a comparison of known speaking engagements to the 1099s used in the computation of income revealed that numerous organizations failed to issue the requisite documents. Accordingly, a discrepancy exists between the amount of income earned and the amount of income reported on Cisneros' individual income tax return.

6. During an April 4, 1996, interview with IRS SAs Barrows and Lange in San Antonio, Texas, Hernandez made the following statements regarding the preparation of Cisneros' 1991 individual income tax return:

- a. Hernandez advised that neither Cisneros nor his employees ever told him some income checks were cashed or not deposited;
- b. Hernandez stated that he had a "gut feeling" that some income may not have been deposited in 1991; and,
- c. Hernandez stated that Cisneros and all of his employees knew that all income had to be deposited.

7. According to information the IRS gathered during its administrative tax investigation, however, Cisneros underreported approximately \$126,000.00 in taxable income. In view of this information, there is reason to believe that Secretary Cisneros evaded the payment of income taxes in 1991 and made false statements to the FBI and the IRS about this matter. Because further investigation is warranted with respect to the identification of all organizations who retained the services of Cisneros, the exact amount, however, cannot be quantified at this time.

CISNEROS' EVASION OF INCOME TAX IN 1992

H. 1. During 1992, Cisneros and others acting on his behalf, deposited \$63,200.00 into Medlar's bank account number [REDACTED], at Broadway National Bank, San Antonio, Texas. Of this amount, \$59,200.00 was in cash, \$3,000.00 was in the form of a check made payable to Cisneros (presumably for a speaking fee), and \$1,000.00 was from one of Cisneros' bank accounts. Cisneros obtained the vast majority of this money through Cisneros Communications, as a result of his giving speeches.

2. An examination of Cisneros' 1992 individual tax return (Form 1040) revealed that he reported \$371,085.00 in revenue from Cisneros Communications.

3. A review of workpapers and related source data from Hernandez revealed that (Hernandez) computed the above revenue figure (\$371,085.00) by utilizing the "deposit method." According to an itemized income and expense account report Hernandez prepared internally, he calculated income by adding deposited items from four bank accounts in the name of Cisneros at First Interstate Bank, San Antonio, Texas. These accounts are:

- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]
- d. [REDACTED]

4. Moreover, a thorough review of the itemized income and expense report revealed that only deposits made **through October 5, 1992**, were included as part of Cisneros' 1992 income: **deposits made after this date were not included on the itemized income and expense report and, accordingly, were not included on Cisneros' 1992 individual income tax return.** Hernandez made the following statements (which are followed in parenthesis by the source of the statements) regarding the preparation of Cisneros' 1992 tax return:

- a. Hernandez stated that he used the "deposit method" to calculate Cisneros' Schedule C Income in 1992 as all deposits were treated as income. (FBI SAs George Parks and Claude Martin January 26, 1995, interview of Hernandez in San Antonio, Texas);
- b. Hernandez stated that he was unaware of any deposits/income after the first week of October, 1992. (IRS SAs Barrows and Lange April 4, 1996, interview of Hernandez in San Antonio, Texas);
- c. Cisneros advised Hernandez that he did not give any lectures after the first part of October, 1992, because he was involved with the Clinton Presidential campaign and that the only income received after the first part of October

would be de minimis. (IRS SAs Barrows and Lange April 4, 1996, interview of Hernandez in San Antonio, Texas); and,

- d. Hernandez requested from Cisneros and his employees, bank statements for the end of 1992; however, he never received any. (IRS SAs Barrows and Lange April 4, 1996, interview of Hernandez in San Antonio, Texas).

5. Based on a deposit analysis to ascertain sources of funds, the affiant calculated that Cisneros did not report income in the amount of \$75,364.00 for the last three months of 1992.

This figure encompasses speaking fees and taxable travel reimbursements. Cisneros deposited additional funds received totaling \$11,564.00 in the last three months of 1992, however, additional investigation is warranted to determine the taxability of these funds.

Cisneros utilized at least \$28,500.00 to make payments to Medlar during the months of October, November and December, 1992. Cisneros "structured" two payments of \$8,000.00 to Medlar's Broadway National Bank account on December 16, 1992, and December 18, 1992, both of which Sylvia Arce-Garcia, an employee of Cisneros, deposited into this account.³ Cisneros knew that he would be subject to a FBI background investigation in connection with his HUD appointment when these payments occurred. Medlar used the \$16,000.00 to purchase a new home in Lubbock, Texas. This house was purchased by Medlar via "straw-borrowers," namely, Medlar's sister, Patsy J. Wooten and her husband, Allen R. Wooten in violation of 18 U.S.C. §§ 1014 and 1344. Cisneros was aware that the house was not being purchased in Medlar's name. The house was ostensibly purchased in the Wooten name in order to, among other things, conceal Cisneros' connection with the transaction. Medlar purchased the house with the understanding that Cisneros' funding would enable her to pay off the bank's lien. In March, 1995, after the Cisneros payments stopped, Medlar, through her relatives, was forced to sell the house.

6. Based on a review of 25 income checks (in contrast to the one (1) 1992 income check DOJ/PIS examined during the preliminary investigation) that were either cashed, deposited directly into Medlar's bank account or deposited to accounts Cisneros did not disclose to CPA Hernandez, the affiant has reason to believe, based upon specific and credible evidence, that Cisneros underreported an additional \$52,745.00 in taxable income for tax year 1992. Regarding this unreported income, the following statements were made:

³ On December 31, 1992, Arce-Garcia denied knowledge of payments from Cisneros to Medlar during Cisneros' background investigation. (See, ¶ J.2., infra.)

- a. Hernandez advised that he did not fear that income checks were not being deposited since he had been told by Cisneros that all income checks were deposited. (IRS SAs Barrows and Lange April 4, 1996, interview of Hernandez, in San Antonio, Texas)
- b. During a telephonic conversation between Cisneros and Medlar on December 30, 1992, which she tape recorded, Cisneros purportedly made the following statement regarding the taxation of money he was giving her:

Medlar: "Don't panic, they didn't say anything about the money?"

Secretary Cisneros: "No, but I talked to Sylvia⁴ and she said that they talked to Luis Hernandez, the accountant and asked him today whether he knew of any payments and he said no, he did not because he does not, he doesn't get involved in that, he accounts for the money we put into the system and the money that I help you with comes before that, comes out before it gets to him." (emphasis added).

7. As set forth above, the OIC has determined that Cisneros and Medlar and others conspired not only to make false statements and to conceal information via lies and omissions from the FBI and other entities concerning his relationship with, and payments to Medlar during the FBI background investigation, but also that the conspiracy continued post-confirmation. To that end, Cisneros alone and in conjunction with others continued to make payments to Medlar.

In this regard, the affiant examined the origin of certain funds paid by Cisneros to Medlar during calendar year 1993, which relate to an improper \$30,000.00 deduction taken by Cisneros for tax year 1992. This examination revealed the following information:

- a. During the calendar tax year of 1992, Cisneros made twelve \$2500.00 monthly payments to Lincoln Benefit Life Company ("Lincoln Benefit") pursuant to an Annuity Agreement dated May 17, 1991, account number [REDACTED]. This money was automatically withdrawn from his personal bank account at First Interstate Bank per a pre-authorized agreement beginning mid 1991. Affiant's

⁴ Sylvia is the Sylvia Arce-Garcia, referenced in Section J.2. herein.

review of the documentation received from Lincoln Benefit, including, but not limited to, the Annuity Agreement, revealed that Cisneros had purchased the annuity as a personal investment and not a retirement plan, i.e., not an IRA, Keogh, SEP, etc. Moreover, telephonic conversations between the affiant and Lincoln Benefit personnel revealed that this plan, "Futurist I." was a non-qualifying savings plan similar to a savings account.

- b. On January 15, 1993, Secretary Cisneros requested a complete liquidation of this account.
- c. On February 1, 1993, Lincoln Benefit mailed Secretary Cisneros a check in the amount of \$49,686.06. The investigation has revealed that because this distribution was from an annuity plan, which had not been carried to maturity and was not from a retirement plan, this money was not taxable to Secretary Cisneros. Accordingly, Lincoln Benefit issued no Form 1099 and Secretary Cisneros did not (nor was he required) to report this money on his 1992 or 1993 individual income tax return.
- d. On February 9, 1993, Secretary Cisneros deposited \$29,686.06 of the \$49,686.06 Lincoln Benefit payment in account number [REDACTED], an interest bearing checking account he maintained at Crestar Bank in Washington, D.C.
- e. On the same date, Secretary Cisneros deposited the remaining \$20,000.00 of the Lincoln Benefit payment into another Crestar Bank in Washington, D.C., namely account number [REDACTED], a money market account. The statements for these accounts were addressed to Secretary Cisneros' office at [REDACTED] not to his residence.
- f. On February 10, 1993, Secretary Cisneros deposited \$7,500.00 via wire transfer from his Crestar account, number [REDACTED], into Medlar's personal bank account at First National Bank of Lubbock, account number [REDACTED]. The source of these funds was the distribution Secretary Cisneros received from Lincoln Benefit in February, 1993.

- g. On February 16, 1993, Secretary Cisneros deposited \$15,000.00 via wire transfer from his Crestar account, number [REDACTED], into Medlar's personal bank account at First National Bank of Lubbock, number [REDACTED]. The source of these funds was the distribution Secretary Cisneros received from Lincoln Benefit in February, 1993.
- h. On February 24, 1993, Secretary Cisneros deposited \$15,000.00 via wire transfer from his Crestar account, number [REDACTED], into Medlar's personal bank account at First National Bank of Lubbock, number [REDACTED]. The source of these funds was the distribution Secretary Cisneros received from Lincoln Benefit in February, 1993.
- i. On March 15, 1993, Secretary Cisneros deposited \$10,873.45 via wire transfer from his Crestar account, number [REDACTED] (\$4,191.14) and number [REDACTED] (\$6,682.31), into Medlar's personal bank account at First National Bank of Lubbock, number [REDACTED]. The source of these funds was the distribution Secretary Cisneros received from Lincoln Benefit in February, 1993. This last wire transfer, for all practical purposes, liquidated both Crestar accounts.
- j. The affiant reviewed workpapers Hernandez furnished in order to ascertain how he accounted for the payments Secretary Cisneros made to Lincoln Benefit. The review focused on the itemized income/expense account report for the period January 1, 1992 through December 31, 1992, Secretary Cisneros' personal bank accounts at First Interstate and his 1992 individual income tax return. This review revealed the following:
- (i) Secretary Cisneros' 1992 payments to Lincoln Benefit were classified as a contribution to a retirement account. In the margin of the itemized income/expense account, Hernandez made the calculation -- "12 x \$2,500.00 = \$30,000.00."
 - (ii) Secretary Cisneros' 1992 individual income tax return includes a \$30,000.00 deduction for a contribution to a retirement account. Secretary Cisneros deducted this amount on line 27 of Form

1040 -- Keogh retirement plan and self-employed SEP deductions -- within the classification "Adjustments to Income." Secretary Cisneros used this deduction to offset \$30,000.00 of gross income.

(iii) Hernandez stated that Cisneros, Ramirez and Arce-Garcia all told him that the \$2,500.00 Lincoln Benefit monthly payment was for a retirement plan. (IRS SAs Barrows and Lange, October 19, 1996. Interview of Hernandez.)

k. In summary, Secretary Cisneros was not entitled to take a \$30,000.00 deduction for a contribution to a retirement account because:

(i) Contributions made to Lincoln Benefit were for the purchase of an annuity -- not a retirement fund; and,

(ii) The money that was distributed in February, 1993, the majority of which was used by Secretary Cisneros to pay Medlar, was not taxable and was not included in his 1993 gross income.

l. Secretary Cisneros' improper deduction of \$30,000.00 in 1992 resulted in a \$30,000.00 reduction of taxable income from his 1992 individual income tax return.

8. In view of the facts set forth in ¶¶ H. 1-7, there is reason to believe, based upon specific and credible evidence, that Secretary Cisneros understated his gross income for tax year 1992 in the amount of \$158,109.00, and thereby evaded the payment of income tax and lied to the IRS about this matter.

CISNEROS' EVASION OF INCOME TAX IN 1993

1. From 1993 through early 1993, Medlar received at least \$85,000.00 in cash from Cisneros and persons acting on his behalf. This figure includes the \$48,373.45 wire transferred from Cisneros' Crestar account to Medlar which was sourced by Cisneros' liquidation of his Lincoln Benefit account as set forth above. In addition to those payments, investigation revealed the following:

1. On February 5, 1993, Secretary Cisneros requested and subsequently received distributions from three Mass Mutual Individual Retirement Accounts (IRAs) as follows:

<u>Account Number</u>	<u>Amount</u>
██████████	\$13,745.50
██████████	19,786.25
██████████	2,836.23

2. Documentation received from Mass Mutual (Form 1099) revealed that distributions from account numbers ██████████ and ██████████, totaling \$33,531.75, were taxable. The distribution from account number ██████████ was deposited on or about February 18, 1993, to Secretary Cisneros' account at the Bank of the West, San Antonio, Texas. Distributions from account numbers ██████████ and ██████████ were deposited on or about February 24, 1993, to Secretary Cisneros' account at Riggs National Bank, Washington, D.C. While the proceeds of these distributions do not appear to be connected to payments Secretary Cisneros made to Medlar, these distributions partially enabled Secretary Cisneros to satisfy his financial obligations that would have otherwise gone unsatisfied or would have been satisfied by money that was used to pay Medlar. This is especially true in light of Secretary Cisneros' poor financial condition at the time.

3. The affiant reviewed Secretary Cisneros' 1993 individual income tax return to ascertain whether he reported as taxable income the \$33,531.75 distribution he received from Mass Mutual. According to this income tax return, Secretary Cisneros did not include this money anywhere within the income classification. This money, accordingly, was not taxed.

4. Mass Mutual mailed a Form 1099 reflecting these distributions to Cisneros.

5. Hernandez made the following statements regarding distributions made from Cisneros' Mass Mutual Accounts: Hernandez was not told by Secretary Cisneros of any distributions from Mass Mutual or (Lincoln Benefit) in 1993. Nor did he receive any form 1099s for these accounts from Cisneros. (IRS SAs Barrows and Lange, October 19, 1996, interview of Hernandez).

6. In total, for the tax year 1993, Secretary Cisneros' personal tax liability was \$118,386.00. During the year, he paid in \$47,761.00 to the IRS in the form of federal withholding from his pay check which left a balance due of \$70,625.00.

- a. In April of 1994, Secretary Cisneros, because he lacked the requisite financial resources to pay this liability, requested permission from the IRS to repay this debt over a

protracted period in the form of monthly payments of \$1,100.00. This request, dated April 10, 1994, was made via a formal letter from Secretary Cisneros to the IRS Austin District Office, Austin, Texas.

- b. In May of 1994, the IRS rejected Secretary Cisneros' request to pay his taxes via an installment plan.
- c. In June of 1994, Secretary Cisneros applied for and received a \$100,000.00 personal loan from the International Bank of Commerce ("IBC") in Laredo, Texas.
- d. On June 28, 1994, Secretary Cisneros deposited the \$100,000.00 loan proceeds in an IBC demand deposit account.
- e. On June 29, 1994, Secretary Cisneros disbursed \$67,000.89 from this account via a cashier's check payable to the IRS, ostensibly to pay the 1993 outstanding balance.
- f. By borrowing the necessary funds and paying the tax in full, Secretary Cisneros was able to avoid the IRS filing a tax lien on his personal property.

7. Based on the foregoing series of transactions, the affiant has reason to believe that Secretary Cisneros' lack of disposable funds and poor financial condition motivated him, in whole or in part, to underreport taxable income and evade tax for tax year 1993.

8. In view of the facts set forth above, there is reason to believe that Secretary Cisneros understated his gross income for tax year 1993 in the amount of \$33,531.75 and thereby evaded the payment of income tax and lied to the IRS about this matter.

OVERLAP OF PERSONS/WITNESSES AND DOCUMENTARY EVIDENCE

J. Based on investigation to date, there is a considerable overlap of participants in the false statement and tax evasion allegations. In addition, substantial documentary evidence establishing payments made to Medlar, and thus the false statement allegations, also establishes the tax evasion allegations.

By means of illustration and not limitation, Cisneros as the payor and Medlar as the recipient of funds are clearly central figures in both sets of allegations. Furthermore, as a result of their knowledge of, and/or participation in Cisneros' payments to Medlar, certain of Cisneros'

employees at Cisneros Communications also have information regarding the tax evasion allegations; for example:

1. Alfred Ramirez, Cisneros' close personal friend and President of Cisneros Communications, which he operated on a day-to-day basis until September of 1992, when he left its employ, personally participated in making numerous payments to Medlar on Cisneros' behalf. In addition to having personal knowledge of the nature and extent of Cisneros' payments to Medlar, Ramirez, due to his employment, had personal knowledge of Cisneros Communications' bookkeeping and banking practices, its financial condition as well as Cisneros' finances, all of which are directly relevant to the income tax allegations. During Cisneros' background investigation, Ramirez concealed information from the FBI concerning, among other things, payments to Medlar.

In July, 1993, Ramirez became a Special Assistant to the President -- Associate Director -- Personnel, a GS position at a \$85,000.00 per year salary. In October, 1993, Ramirez became Senior Advisor to Public Liaison Corporation for National and Community Service, a Senior Executive Service ("SES") position at a salary of \$92,000.00. In July, 1994, Ramirez became Director, White House Initiative on Hispanic Education, operated from the Department of Education, a GS-15 position classified SES at a \$95,531.00 salary. (Ramirez, Department of Education personnel records.) Ramirez ostensibly secured all of these high government positions with the intervention and assistance of Cisneros. Therefore, by mid-1994, Ramirez's government salary had increased approximately \$54,000.00 from his Cisneros Communications salary where he earned \$42,000.00 a year. (Ramirez, Department of Education personnel records.)

2. Another Cisneros Communication employee, Sylvia Arce-Garcia, a long-time confidant of Cisneros, and his Personal Assistant at Cisneros Communications, also had personal knowledge of and participated in making payments to Medlar on Cisneros' behalf. In addition to having personal knowledge of Cisneros' relationship with and payments to Medlar, Arce-Garcia, due to her employment at Cisneros Communications had personal knowledge of its accounts payable and receivable, methods of collection of income and payment of expenses as well as Cisneros' finances, all of which are directly relevant to the income tax allegations. Like Ramirez, Arce-Garcia concealed information concerning Medlar from the FBI during Cisneros' background investigation. For instance, in mid-December of 1992, Arce-Garcia deposited into Medlar's bank account at Cisneros' direction, \$8,000.00 on two separate days, December 16 and 18, 1992, for a total of \$16,000.00. On December 31, 1992, while being interviewed by the FBI as part of Cisneros' background investigation, Arce-Garcia denied knowing of any Medlar payments.

As set forth above, the investigation has revealed that these payments to Medlar were "structured" and thus in violation of, inter alia, 31 U.S.C. § 5324. Title 31 U.S.C. § 5324 makes it a federal crime to "structure" cash transactions in order to avoid the creation of a Currency Transaction Report ("CTR"), IRS Form 4789, which is required to be filed by financial

institutions with respect to all currency transactions in excess of \$10,000.00. OIC's investigation has revealed that on February 26, 1991, Ramirez, at the direction of Cisneros, deposited \$12,000.00 into Medlar's bank account at Broadway National Bank, account number [REDACTED]

[REDACTED] According to financial documentation reviewed by the affiant, namely Medlar's bank records, this was the first payment Cisneros made to Medlar that exceeded \$10,000.00. Because the deposit was made in cash and exceeded \$10,000.00, Broadway National Bank, pursuant to federal law, filed a CTR with the IRS regarding this transaction. A review of the CTR revealed that Ramirez did not disclose the fact that the deposit was made on behalf of Cisneros, i.e., there is no information contained within the CTR that links Cisneros to the deposit. Nevertheless, from that day forward, all additional payments from Cisneros to Medlar were made in increments of less than \$10,000.00 to, *inter alia*, avoid the creation of CTRs and to ensure the payments would be kept secret.

Moreover, after Cisneros became HUD Secretary, Arce-Garcia personally participated in the continuing conspiracy and scheme to conceal information. Like Ramirez, Arce-Garcia also was rewarded with a high-paying federal job. Arce-Garcia became Cisneros' Personal Assistant at HUD, a GS-14 position where she earned a starting salary of \$47,920.00. This represented a \$17,920.00 raise from her job at Cisneros Communications where she was earning \$30,000.00 per year. (HUD Arce-Garcia personnel records.)

3. Yet another long-term Cisneros Communications employee, John Albert Rosales, who took over as President in September 1992, when Ramirez left, also allegedly had knowledge of Cisneros' payments to Medlar. In addition to having knowledge of Cisneros' payments to Medlar, Rosales, due to this employment at Cisneros Communications, which he operated on a daily basis and was responsible for dealing with accountants, also had knowledge of Cisneros Communications' financial condition and bookkeeping practices, all of which are relevant to the income tax allegation. Like his colleagues, Ramirez and Arce-Garcia, Rosales also concealed information from the FBI concerning Medlar during Cisneros' background investigation. And like Ramirez and Arce-Garcia, Rosales also was rewarded with a high-paying federal job. He became a Special Assistant to Cisneros at HUD, a GS-14 position where he earned \$56,287.00 a year. This represented a \$26,287.00 increase from his job at Cisneros Communications where he was earning \$30,000.00 a year. (HUD Rosales personnel records.)

4. In addition to Ramirez, Arce-Garcia and Rosales, other employees of Cisneros Communications also have information concerning Cisneros' payments to Medlar and knowledge of Cisneros Communications bookkeeping practices and financial conditions.

5. Not only do certain Cisneros Communications employees have information regarding false statement and tax evasion allegations, others do as well. Again, by means of illustration and not limitation, Luis Hernandez, who took over from Rene Gonzalez as Cisneros' personal and business CPA in April, 1992, possesses detailed information not only about the tax and bookkeeping practices of Cisneros Communications and its and Cisneros' financial condition, but suspected that Cisneros had made payments to Medlar. Furthermore, Hernandez is a witness to Cisneros' improper \$30,000.00 Lincoln Benefit deduction in tax year 1992 and his failure to declare the 1993 \$33,531.75 Mass Mutual IRA distribution for tax year 1993.


6. Not only is there a significant overlap in terms of persons with knowledge and information concerning the false statement and tax evasion allegations, there is a substantial overlap of documentary evidence. For instance, the same banking, business and accounting records not only establish the true amounts and timing of payments to Medlar, these records also establish income received by Cisneros via Cisneros Communications which, as set forth above, was not declared in part and thus substantiate the tax evasion allegations.

CONCLUSION

K. Based on the foregoing, there is reason to believe that Cisneros underreported taxable income for the tax years 1989, 1991, 1992 and 1993 and thereby evaded payment of income tax in violation of 26 U.S.C. § 7201 and filed false tax returns for such years in violation of 26 U.S.C. § 7201(1). Therefore, there is reason to believe that Cisneros violated 18 U.S.C. § 1001 as to statements he made to the FBI concerning his federal income taxes in connection with his FBI background investigation and 18 U.S.C. § 1001 and 26 U.S.C. § 7212(a) in connection with the IRS administrative investigation of his tax liability. In addition, there is reason to believe that Cisneros violated 18 U.S.C. § 371 by conspiring to defraud the IRS.

L. Further investigation is warranted to determine in totality, the amount, sources and scope of underreported income for the tax years 1989, 1991, 1992 and 1993 and the identity of all persons who participated in such activity as well as the nature and extent of their participation.

M. Further, affiant sayeth not.


T.J. ROBERTS
Special Agent
Federal Bureau of Investigation

Subscribed and sworn to before me this 28th day of January, 1997.



**NOTARY PUBLIC
FOR WASHINGTON, THE DISTRICT OF COLUMBIA**

My Commission Expires May 14, 2000
MY COMMISSION EXPIRES: _____